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April 9, 2004

By Fax: (617) 348-4545 - Confirmation Copy to Follow

Frederick S. Gilman, Esq.
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Re: Autoplex III Realty Trust
DEP Docket No. 00-155, DEP File No.85-707

Dear Fred:

The Acton Conservation Commission had a special meeting this morning to sign the Conservation Restriction and identified a couple of problems with the document which I hope you will consider minor, and which I propose to correct as reflected in the attached revisions to pages 1, 3 and 4. There are four proposed changes.

First, the first sentence in Article II (page 1) was never revised to reflect the areas that were added to the description of the restricted land in Article I (most notably the land on the north side of Powder Mill Road). As the figure of 3.59 acres does not describe all the land affected by the Restriction, and because the "Easement Plan" does not give the acreage or square footage of the restricted area north of Powder Mill Road, we propose to delete the reference to the size of the parcel and replace it with a reference back to the parcel descriptions in the Granting Clause (Article I).

Second, the second paragraph of Article IV ("Access") includes a typographical error regarding the limited right of the Commission to enter the balance of the restricted areas for inspection purposes: the Commission should have been identified as the "Grantee," not the "Grantor."

Third, while we added a specific right of the Commission to construct an access walkway parallel to the Assabet River north of Powder Mill Road, the Restriction says nothing about the public right to use the walkway (which was the obvious intent of constructing it). We propose to insert the words "and public use" into the Section III.B.2., so that it reads "[t]he construction and maintenance by the Grantee, *and public use*, of an unpaved walking trail."

Finally, the Commission had been given to understand from its discussions with Leo Bertolami that the walking trail would be along the length of the Assabet River to the Concord line, in anticipation of the possibility that the Town of Concord may wish to obtain the rights to

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extend it further. It would therefore not be limited to the north side of Powder Mill Road, but would extend southward from the Canoe Landing area. Consequently, the Commission is requesting that the language in Section III.B.2. limiting the walking path to that portion of the premises described in part "b)" of the Granting Clause be deleted.

The two changes to Section III.B.2. would also expand the scope of the first paragraph of Article IV, which refers back to that section, but no modification of the language of Article IV is required for that purpose.

Subject to your client's agreement to those changes, the Commission has signed the Restriction and forwarded it to the Board of Selectmen. Please let me know if you want to have your client and the lender re-sign a new corrected copy, or if they will consent to the substitution of these pages. I have revised the document so that the pagination of the subsequent pages is not affected.

Please be advised that I have already forwarded an advance copy the Restriction and some background materials to Joel Lerner, Director of Conservation Services at the Executive Office of Environmental Affairs, so that the process of obtaining the approval of the EOEa Secretary will not be unduly delayed. I am sending Mr. Lerner a copy of this letter so that he will be aware of these proposed amendments. Obviously, if Mr Lerner identifies any other problems with the current draft that will have to be resolved in order to obtain the Secretary's approval of the document, we will have to address those too.

If you have any questions regarding the enclosed, please feel free to call me.

Sincerely,

George A. Hall, Jr.

GAH/g
Enclosure

cc: Joel Lerner, EOEa
Tom Tidman, Acton Conservation Commission
Don P. Johnson (by email)
Stephen D. Anderson, Esq. (by email)